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THE HONORABLE LONNY R. SUKO

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

PLYMOUTH GRAIN TERMINALS,  
LLC, a Delaware limited liability  
company, CENTRAL WASHINGTON  
CORN PROCESSORS, INC., a  
Washington corporation, and PAULSON  
COMMODITIES, LTD., an Oregon  
corporation,

Plaintiffs,

v.

LANSING GRAIN COMPANY, LLC, a  
Michigan limited liability company,  
LANSING GRAIN COMPANY, an  
assumed name, LGC GRAIN COMPANY,  
LLC, a Michigan limited liability  
company, and LANSING TRADE  
GROUP, LLC, a Delaware limited liability  
company,

Defendants.

LANSING TRADE GROUP, LLC, a  
Delaware limited liability company,

Counterclaim Plaintiff,

v.

CASE NO. CV-10-5019-LRS

**STIPULATED PROTECTIVE  
ORDER**

PLYMOUTH GRAIN TERMINALS,  
LLC, a Delaware limited liability  
company, CENTRAL WASHINGTON  
CORN PROCESSORS, INC., a  
Washington corporation, and PAULSON  
COMMODITIES, LTD., an Oregon  
corporation,  
  
Counterclaim Defendants.

Pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of  
Evidence 502(d), it is hereby ordered as follows:

1. This Protective Order shall apply to any information, document or  
thing subject to discovery in this action that is believed to contain confidential or  
proprietary information and is owned or controlled by a party, or is owned or  
controlled by a third party who elects or is ordered to provide discovery in this  
action under the terms and conditions of this Protective Order (hereinafter  
“CONFIDENTIAL MATERIALS”). This includes, without limitation, testimony  
adduced at depositions upon oral examination pursuant to Fed. R. Civ. P. 30,  
written responses to interrogatories pursuant to Fed. R. Civ. P. 33, documents  
produced pursuant to Fed. R. Civ. P. 34, answers to requests for admission  
pursuant to Fed. R. Civ. P. 36, and testimony, documents and things provided  
pursuant to Fed. R. Civ. P. 45. CONFIDENTIAL MATERIALS shall include all  
information, documents and things relating in any way to the substance of the  
foregoing, including but not limited to, copies, summaries, or abstracts of the  
foregoing.

2. This Order shall govern the handling of documents and the  
information they contain prior to trial, and shall govern the handling after trial of

1 documents and information that do not become part of the record at trial. With  
2 respect to documents or information to be used at trial, the parties shall meet and  
3 confer after the pretrial conference to reach an agreement as to the confidentiality  
4 of information to be used at trial. If necessary, the parties will also develop a  
5 method for maintaining the confidentiality of such information and documents at  
6 trial.

7 3. A party or third party producing materials (“Providing Party”) shall  
8 label or mark documents and things deemed to be CONFIDENTIAL  
9 MATERIALS with the legend “Confidential.” At the time a document or portion  
10 thereof is produced for inspection by counsel, it is sufficient designation for this  
11 purpose that a container holding tangible objects, a file or an individual document  
12 bear a written label marked “Confidential.”

13 4. CONFIDENTIAL MATERIALS mistakenly produced or disclosed  
14 without a “Confidential” designation after the entry of this Order may be  
15 subsequently designated by the producing person as “Confidential” pursuant to  
16 the terms of Paragraph 3. Such correction and notice thereof shall be made in  
17 writing, accompanied by substitute copies of each item, appropriately marked  
18 “Confidential.” Within five days of receipt of the substitute copies, the receiving  
19 party shall return or destroy the previously unmarked items and all copies  
20 thereof. No person shall be liable for publicly disclosing CONFIDENTIAL  
21 MATERIALS pursuant to this paragraph if that disclosure occurred prior to  
22 receipt of said written notice.

23 5. In the case of depositions upon oral examination, counsel shall have  
24 30 days from receipt of the deposition transcript to request in writing that the  
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1 specific pages which include CONFIDENTIAL MATERIALS be included in a  
2 separate, sealed portion of the transcript. The reporter, who shall first have  
3 agreed to abide by the terms of this Protective Order, shall be instructed to  
4 include on the cover page of each sealed portion the legend: "This transcript  
5 portion contains information subject to a Protective Order and shall be used only  
6 in accordance therewith." When testimony designated as confidential is elicited  
7 during a deposition, persons not entitled to receive such information under the  
8 terms of this Order shall be excluded from the deposition.

9 6. Until expiration of the aforesaid 30-day period, all deposition  
10 transcripts shall be considered and treated as protected CONFIDENTIAL  
11 MATERIALS, unless otherwise agreed on the record at the deposition.

12 7. CONFIDENTIAL MATERIALS shall be treated by each receiving  
13 party as confidential unless and until this Court rules to the contrary or the  
14 Providing Party agrees otherwise. Unless and until the Court rules or the  
15 Providing Party otherwise agrees, access to or disclosure of CONFIDENTIAL  
16 MATERIALS shall be limited to:

17 (a) The Court and those employed by the Court, in which event such  
18 information shall be filed under seal in accordance with the  
19 Electronic Case Filing, Administrative Procedures for Electronic  
20 Case Filing-Civil Cases, Section II.A.4. (and kept under seal until  
21 further order of the Court);

22 (b) The named parties in this case and their employees assisting in this  
23 case, as well as their in-house attorneys and legal staff;  
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1 (c) The outside attorneys of record, and associated attorneys within the  
2 parties' respective outside law firms, and the employees of such  
3 attorneys;

4 (d) Outside experts or outside consultants for a party, including their  
5 stenographic and clerical personnel, whose advice and consultation  
6 are being or will be used by such party in connection with  
7 preparation for trial, or for trial of this action, including any motions  
8 in this action;

9 (e) Any actual or potential witness, provided there is a reasonable basis  
10 to believe that the witness will give relevant testimony regarding the  
11 confidential material; and

12 (f) Any person testifying at a deposition.

13 8. Counsel desiring to disclose CONFIDENTIAL MATERIALS to  
14 such outside experts or outside consultants under Paragraph 7(d), actual or  
15 potential witnesses under 7(e) or deponents under 7(f) shall first obtain from each  
16 such person a signed undertaking in the form of Exhibit A hereto.

17 9. CONFIDENTIAL MATERIALS of a Providing Party shall not be  
18 made public by the receiving party or divulged to anyone other than the persons  
19 entitled to access as set forth herein. No CONFIDENTIAL MATERIALS shall  
20 be reproduced or used except in connection with the litigation.

21 10. Nothing in this Protective Order shall require disclosure of material  
22 that counsel for a party or a third party contends is protected from disclosure by  
23 the attorney-client privilege or the attorney work-product immunity. This shall  
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1 not preclude any party from moving the Court for an Order directing the  
2 disclosure of such material.

3 (a) If, in connection with the pending litigation, a Providing Party  
4 discloses information subject to a claim of attorney-client privilege or attorney  
5 work product protection (“Disclosed Protected Information”), the disclosure of  
6 the Disclosed Protected Information shall not constitute or be deemed a waiver or  
7 forfeiture of any claim of privilege or work product protection that the Disclosing  
8 Party would otherwise be entitled to assert with respect to the Disclosed  
9 Protected Information and its subject matter.

10 (b) A Providing Party may claim in writing attorney-client privilege or  
11 work product protection with respect to Disclosed Protected Information. The  
12 Receiving Party shall, within five business days of receipt of that writing, return  
13 or destroy all copies of the Disclosed Protected Information and provide a  
14 certification of counsel that all such Disclosed Protected Information has been  
15 returned or destroyed.

16 (c) Within five business days of the notification that such Disclosed  
17 Protected Information has been returned or destroyed, the Disclosing Party shall  
18 produce a privilege log with respect to the Disclosed Protected Information.

19 (d) The receiving party may move the Court for an Order compelling  
20 production of the Disclosed Protected Information (a “Privilege Motion”). The  
21 Privilege Motion shall be filed under seal and shall not assert as a ground for  
22 entering such an Order the fact or circumstances of the production.

23 (e) The Producing Party retains the burden of establishing privileged or  
24 protected nature of any Disclosed Protected Information. Nothing in this  
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1 paragraph shall limit the right of any party to petition the Court for an in camera  
2 review of the Disclosed Protected Information.

3 (f) If, at trial, at a hearing, at a deposition, or on a motion, a Producing  
4 Party marks for identification or offers into evidence Disclosed Protected  
5 Information — or proffers or elicits testimonial or other evidence that  
6 incorporates or relies on Disclosed Protected Information, including evidence  
7 within Federal Rule of Evidence 703 — that act shall be deemed to effect a  
8 waiver and forfeiture by the Disclosing Party of attorney-client privilege and  
9 work product protection that would otherwise apply to undisclosed information  
10 concerning the same subject matter, within Federal Rule of Evidence 502(a). The  
11 preceding sentence shall not apply to (i) proceedings to determine whether the  
12 Disclosed Protected Information is privileged or protected or subject to discovery  
13 or disclosure, or (ii) Disclosed Protected Information that is marked for  
14 identification, offered into evidence, or incorporated in evidence proffered or  
15 elicited by an adverse party, or relied on by a witness proffered by an adverse  
16 party.

17 11. The acceptance by a party of CONFIDENTIAL MATERIALS shall  
18 not constitute an admission or concession or permit an inference that the  
19 CONFIDENTIAL MATERIALS are, in fact, confidential. This Protective Order  
20 shall not foreclose a party from moving or for an order that any  
21 CONFIDENTIAL MATERIALS are not, in fact, confidential.

22 12. This Protective Order shall not prevent a party or third party from  
23 applying to the Court for relief therefrom, or from applying to the Court for  
24 further or additional protective orders.

1        13. Any party may object to the confidential designation of any  
2 document or information. If a party does so, it must do so in writing to counsel  
3 and request a meeting to attempt to resolve the dispute. If the dispute is not  
4 resolved through this meet and confer process, then no later than seven days after  
5 one party or the other in writing states that no resolution of the dispute is  
6 possible, the other party may move the Court for appropriate relief. In the event  
7 that a large number of documents or materials are in dispute, then the parties  
8 shall agree upon a reasonable amount of time during which any party may move  
9 the Court for appropriate relief, not to exceed 25 days after one party or the other  
10 in writing states that no resolution of the dispute is possible. Any disputed  
11 documents or other material shall be treated as confidential under this Protective  
12 Order until the Court rules otherwise.

13        14. If a party objects to confidential designations by a nonparty, the  
14 party shall notify counsel and the nonparty. The nonparty will then have the  
15 obligation to seek protection from the court in which this action is pending or any  
16 other court of competent jurisdiction. Any party may join in such a motion.  
17 Until resolution of such a motion, the documents shall be treated by the parties as  
18 confidential.

19        15. CONFIDENTIAL MATERIALS may be used to prepare for and  
20 conduct discovery and to prepare for trial all subject to Paragraphs 2, 7 and 8.  
21 CONFIDENTIAL MATERIALS may also be used in testimony at trial, in  
22 connection with any motion, at any hearing, and at depositions, and may be  
23 offered in evidence at trial or in connection with any motion, all subject to  
24 Paragraphs 2, 7 and 8. The restrictions on use of CONFIDENTIAL  
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1 MATERIALS set forth in this Protective Order shall survive the conclusion of  
2 this litigation and, after conclusion of this litigation, the Court shall retain  
3 jurisdiction for the purpose of enforcing this Protective Order.

4 16. All exhibits, work product or other materials which contain or  
5 disclose the contents of the CONFIDENTIAL MATERIALS or any portion  
6 thereof and which are developed by outside counsel or by any other expert,  
7 consultant or other person authorized to have access to the subject materials  
8 pursuant to Paragraph 7 hereof shall be subject to all of the provisions of the  
9 Protective Order as if the materials were part of the subject materials.

10 17. After final termination of this action, counsel for the receiving party  
11 shall return all copies of CONFIDENTIAL MATERIALS to counsel for the  
12 Providing Party, or shall destroy such CONFIDENTIAL MATERIALS, and shall  
13 certify either the return or the destruction of all such CONFIDENTIAL  
14 MATERIALS to counsel for the Providing Party. In addition, counsel for the  
15 receiving party shall either return all copies provided to other persons pursuant to  
16 Paragraph 7(d)-(f) or shall obtain a certification of destruction from such persons.

17 18. Restrictions and obligations set forth herein relating to  
18 CONFIDENTIAL MATERIALS shall not apply to any information which the  
19 parties agree, or the Court rules, (a) was or becomes public knowledge other than  
20 a result of disclosure by the receiving party, or (b) has come or shall come into  
21 the receiving party's legitimate possession independently of the Providing Party.  
22 Such restrictions and obligations shall not be deemed to prohibit discussions with  
23 any person of any CONFIDENTIAL MATERIALS if the parties agree or the  
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1 Court rules that said person already had or obtained possession thereof  
2 legitimately.

3 19. Nothing in this Protective Order shall limit any Producing Party's  
4 use of its own documents or shall prevent any Producing Party from disclosing its  
5 confidential information to any person. Such disclosures shall not affect any  
6 confidential designation made pursuant to the terms of this Protective Order so  
7 long as disclosure is made in a manner which is reasonably calculated to maintain  
8 the confidentiality of the information.

9 20. The Court retains jurisdiction to make any amendments,  
10 modifications or additions to this Protective Order as it deems appropriate.

11 DATED this 5th day of August, 2011.

12 *s/Lonny R. Suko*

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14 LONNY R. SUKO  
15 US District Court Judge  
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1 Presented by:

2 SUMMIT LAW GROUP PLLC

3 /s/ J. Chad Mitchell

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13 *Attorneys for Defendant and Counterclaim Plaintiff*

**EXHIBIT A**

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GROUP, LLC, a Delaware limited liability  
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LANSING TRADE GROUP, LLC, a  
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v.

CASE NO. CV-10-5019-LRS

**DECLARATION**

**EXHIBIT A**

PLYMOUTH GRAIN TERMINALS,  
LLC, a Delaware limited liability  
company, CENTRAL WASHINGTON  
CORN PROCESSORS, INC., a  
Washington corporation, and PAULSON  
COMMODITIES, LTD., an Oregon  
corporation,  
  
Counterclaim Defendants.

I, \_\_\_\_\_, declare as follows:

1. My address is \_\_\_\_\_.

My present occupation is \_\_\_\_\_.

2. I have received a copy of the Protective Order in this action. I have  
carefully read and understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I  
will hold in confidence, will not disclose to anyone other than those persons  
specifically authorized by the Protective Order, and will not copy or use except  
for purposes of this action, any "CONFIDENTIAL MATERIALS" which I  
receive in connection with this lawsuit.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011 at

\_\_\_\_\_.

I declare under penalty of perjury under the laws of the United States of  
America that the foregoing is true and correct.